

## Department of Justice

## § 68.28

identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. Within eight (8) days after receipt of the petition, the individual or entity that applied for the subpoena may respond to such petition, and the Administrative Law Judge shall then make a final determination upon the petition. The Administrative Law Judge shall cause a copy of the final determination of the petition to be served upon all parties, or, if a complaint has not been filed, upon the individuals or entities requesting and responding to the subpoena.

(d) A party shall have standing to challenge a subpoena issued to a non-party if the party can claim a personal right or privilege in the discovery sought.

(e) Failure to comply. Upon the failure of any person to comply with an order to testify or a subpoena issued under this section, the Administrative Law Judge may, where authorized by law, apply through appropriate counsel to the appropriate district court of the United States for an order requiring compliance with the order or subpoena.

[Order No. 1534-91, 56 FR 50055, Oct. 3, 1991, as amended by Order No. 1635-92, 57 FR 57672, Dec. 7, 1992]

### § 68.26 Designation of Administrative Law Judge.

Hearings shall be held before an Administrative Law Judge appointed under 5 U.S.C. 3105 and assigned to the Department of Justice. The presiding judge in any case shall be designated by the Chief Administrative Hearing Officer. The Chief Administrative Hearing Officer may reassign a case previously assigned to an Administrative Law Judge to promote administrative efficiency. In unfair immigration-related employment practice cases, only Administrative Law Judges specially designated by the Attorney General as having special training respecting employment discrimination may be

chosen by the Chief Administrative Hearing Officer to preside.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991, as amended by Order No. 1635-92, 57 FR 57672, Dec. 7, 1992]

### § 68.27 Continuances.

(a) *When granted.* Continuances shall only be granted in cases where the requester has a prior judicial commitment or can demonstrate undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed not later than fourteen (14) days prior to the date of the scheduled proceeding.

(c) *How filed.* Motions for continuances shall be in writing, unless made during the prehearing conference or the hearing. Copies shall be served on all parties. Any motions for continuances filed fewer than fourteen (14) days before the date of the scheduled proceeding shall, in addition to the written request, be telephonically communicated to the Administrative Law Judge or a member of the Judge's staff and to all other parties.

(d) *Ruling.* Time permitting, the Administrative Law Judge shall enter a written order in advance of the scheduled proceeding date that either grants or denies the request. Otherwise, the ruling shall be made orally by telephonic communication to the party requesting the continuance, who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

[Order No. 2203-99, 64 FR 7077, Feb. 12, 1999]

### § 68.28 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all appropriate powers necessary to conduct fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of the Administrative Procedure Act and of this part;

(2) Administer oaths and examine witnesses;